

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 270 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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A P CHEMICALS

Versus

MUKUNDLAL AMBALAL SHAH

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Appearance:

MR JIVANLAL G SHAH for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. Learned advocate Shri A.K. Clerk is appearing on behalf of the the petitioner Company. Though notice of rule is served to the respondent workman, but no one appeared on behalf of the respondent workman.

2. The present petition is filed by the petitioner company challenging the award passed by the Labour Court, Baroda, in Reference NO. 333/83 dtd. 21st June, 1988 wherein the Labour Court has set aside the termination

order dtd. 10th February, 1983 and granted reinstatement with continuity of service and with full back wages of interim period. The present petition is admitted on 3/2/89, ad-interim relief has been granted on 22/6/92 till final disposal of petition.

3. The brief facts of the case is that the petitioner company runs a Chemical factory at Sardar Estate in the City of Baroda and on 9/5/82, the respondent workman came to be employed by the petitioner company in his factory as a Shift Chemist. According to the petitioner Company, the respondent workman found to be absolute negligent in discharged of his duty and that on several occasions, the respondent was warned with regard to his behaviour and on one occasion, he had expressed his regret in writing for his negligence which was tendered on the point of misconduct. Not only that, but on one occasion on account of his negligence, the petitioner company suffered a damage of Rs. 17,000/- and therefore, the petitioner company did not consider it proper to continue the respondent workman in service. In the aforesaid circumstances, by order dtd. 10/2/83, the service of the respondent workman was terminated on the ground of lost of confidence. The retention in service of the respondent was not at all in the benefit of the petitioner company.

4. The respondent workman had challenged the termination order before the Labour Court Baroda vide reference No.333/83. Before the Labour Court, the workman had filed statement of claim and petitioner company had filed written statement and also produced documentary evidence vide Ex.10. The workman was examined vide Ex.9 before the Labour Court. The Labour Court has come to the conclusion that the petitioner company has not followed the principle of natural justice and no departmental inquiry was held against the respondent workman for the alleged misconduct of damage of Rs.17,000/- to the petitioner company and also come to the conclusion that the workman has completed more than one year period and has also actually worked for more than 240 days in a year and therefore, he is entitled for the benefits of provisions of Sec. 25 F of the I.D. Act and thereafter, the Labour Court has held that the contention of loss of confidence, cannot be pleaded in absence of any evidence and gainful employment was not proved by the petitioner company and therefore, the Labour Court has granted reinstatement with continuity of service with full backwages for intervening period by award dtd. 21/6/88.

5. The learned advocate for the petitioner company has made a statement before this Court that the company has been closed and he further submitted that the respondent workman was subsequently employed from 1st November, 1983 to 16th October, 1985 in Paritosh Chemical Limited, Ahmedabad and from 1/11/85 to 7/5/88 in Dinesh Pharmaceuticals Pvt. Ltd, Nandesari, and from 8/5/88 onwards Ashok Brothers, at G.I.D.C. Nandesari, and continuing service subsequently also, and therefore, from the date of termination, immediately the respondent workman has obtained gainful employment and he was serving with different Company. The said fact which has been pointed out by the petitioner company in the petition, was not controverted by the respondent workman by filing affidavit in reply. The learned advocate further submitted on behalf of the petitioner company that after the award was passed by the Labour Court, the petitioner company has wrote letters dtd. 3rd April, 1989, 30th March, 1989 and 24th March, 1989 by Registered. A.D. and all the letters were received by the respondent workman and copy of the said letters were produced on record on the date of hearing before this Court. According to the submissions made by the learned advocate for the company, the respondent workman is not interested in job because he is a qualified person and immediately engaged in other company and that details has been given in the petition. Not only that he has further submitted that even before this Court also the workman has not appeared which shows that the respondent workman has not interested in job and only he has interest in claim of backwages. He has further submitted that because of the damage caused to the petitioner company due to the negligence of the respondent workman, being a responsible post and post of confidence as a shift chemist, the petitioner company has lost the confidence and was rightly pointed out by the petitioner company before the Labour Court but the Labour Court has not believed the defence of petitioner company which amounts to a basic error committed by the Labour Court.

6. I have considered the submission of learned advocate of the Company and also perused Annexure-C, page 19, certificate dtd. 16th October, 1985, given by the Paritosh Chemicals Pvt. Ltd., Ahmedabad where it was certified that the respondent workman was working there w.e.f. 1st November, 1983 as a Shift Chemist, In-charge of production. Page 20 is the certificate from Dinesh Pharmaceuticals Pvt. Ltd. where also mentioned that the respondent workman was working in the said company as Chemist and details of appointment and salary has been

given in the said certificate. In the said certificate date of joining was shown as 1/11/85. Page 21 is the application of respondent workman dtd. 19/9/85 in respect to job for the post of Manufacturing Chemist. Page 22 is also one of the application of the respondent workman dtd. 28/9/85. After considering the said documents and details produced by the petitioner company in the application and three letters which have been produced on record before this Court, the fact is fully established that from the date of termination immediately thereafter the respondent workman was employed in other company and receiving salary for the same post and not remained unemployed. The said facts which are on record, not disputed by the respondent workman. Not only that but the respondent workman had not appeared before this Court even to defend his case. In light of these facts, I am of the opinion that the award passed by the Labour Court cannot be sustained.

7. The Labour Court has committed error in coming to the conclusion that the loss of confidence has not been found to be proved by the petitioner company in absence of evidence. The fact of damage which has been caused by the respondent workman due to his negligence has not been disputed by the respondent workman before the Labour Court. Not only that but the Labour Court has also not considered the important fact that the post of shift chemist is an important post having some responsibility and confidence therefore, the Labour Court has committed error in coming to the conclusion that termination order which has been passed by the petitioner company is illegal and directed reinstatement with continuity of service with full backwages. After considering the submissions of the learned advocate of the petitioner company and documents which are produced on record of the petition and three letters which were produced by the advocate of the petitioner company on record and considering the fact that the company is closed and workman has been immediately employed after the date of termination and he is continuing service and not interested in the said proceedings, therefore, considering all the facts and circumstances, I am of the opinion that the Labour Court's award in Reference No. 333/83 dtd. 221/6/88 requires to be quashed and set aside and the same is hereby quashed and set aside.

Rule made absolute. No order as to costs.

Sd/-

Date : 22/10/99. ( H. K. RATHOD, J. )

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